

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

HERBERT JOHNSON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO.
	)	JURY TRIAL DEMANDED
KILGORE FLARES COMPANY, LLC	)	
	)	
Defendants.	)	

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COMPLAINT

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**I. PRELIMINARY STATEMENT**

1. This is an employment discrimination action seeking relief as authorized by the Age Discrimination in Employment Act of 1967.

**II. JURISDICTION**

2. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1343(4), 42 U.S.C. § 2000(e-5)(f)(3) and 42 U.S.C. § 1988.

**III. PARTIES**

3. Plaintiff, Herbert Johnson, is a Fifty-Nine (59) year old male and at all times relevant to the matters at issue was a resident of Madison County, Tennessee, and was employed by the Defendant Kilgore Flares Company, LLC, Toone, Hardeman County, Tennessee, beginning in October, 2001.

4. Defendant, Kilgore Flares Company, LLC (hereinafter Kilgore) is a Delaware

corporation licensed to and doing business in the State of Tennessee with its principal office located at 155 Kilgore Drive, Toone, Tennessee, and was at all relevant times hereto Plaintiff's employer as that term is defined in § 701(b) of Title VII, 42 U.S.C. § 2000(e)(b), *et seq.* Its agent for service of process is Richard Beden, 155 Kilgore Drive, Toone, TN 38381.

#### **IV. EXHAUSTION OF REMEDIES**

5. Prior to instituting this action, plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission pursuant to Age Discrimination in Employment Act and received a right to sue letter within 90 day of filing this lawsuit.

#### **V. CAUSE OF ACTION**

6. Defendant Kilgore is a Delaware corporation with a manufacturing company located in Toone, Tennessee which produces rescue flares and explosives for military aircraft.

7. Plaintiff Herbert Johnson (hereinafter Plaintiff) is a 59 year old male who began working at the Defendant's Toone facility in October 2001 as a Process Engineer.

8. During Plaintiff's employment with Defendant he applied for various positions/promotions within the company but he was never offered any of these positions and each time said positions were filled by younger employees with less education and experience. Additionally, Plaintiff was repeatedly moved to various positions within the company.

9. During his employment Plaintiff's co-workers repeatedly made age discriminatory remarks to him, including being called "an old fart, old man" and "old geaser". Plaintiff took no formal action at that time as Defendant was aware of said remarks because various members of management were present when the comments were made and took no action against the individuals who made the remarks or to prevent such remarks from being made in the future.

10. In October, 2004, Plaintiff's employment with Defendant Kilgore was terminated. Plaintiff was rehired in December 2004 as a supervisor with an approximate \$30,000.00 reduction in wages.

11. On August 29, 2005 Plaintiff was again terminated from his employment with Defendant and upon information and belief his position was filled by a younger person.

12. Plaintiff avers that the above stated acts were done by individuals acting on behalf of the named Defendant with the intent and/or result of illegally discriminating against the Plaintiff because of his age and constituted an ongoing and continuous violation of his rights under Age Discrimination in Employment Act and the Tennessee Human Rights Act.

13. The unlawful employment practices complained of herein caused Plaintiff to suffer severe emotional distress, humiliation, inconvenience and embarrassment, as well as the loss of pay and the benefits of his employment.

14. The unlawful employment practices complained of herein were intentional and/or done with reckless indifference to his employment rights protected by Age Discrimination in Employment Act and/or the Tennessee Human Rights Act.

## **VI. PRAYER FOR RELIEF**

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully requests that the court:

a. Declare Defendant's practices as complained of herein to be in violation of the Age Discrimination in Employment Act and the Tennessee Human Rights Act.

b. Grant Plaintiff an injunction prohibiting Defendant, its agents, employees, and successors from further discriminating or retaliating against Plaintiff on account of his age and

for exercising his rights under the Age Discrimination in Employment Act and the Tennessee Human Rights Act.

c. Grant Plaintiff an order requiring Defendant to make him whole by appropriate back pay, front pay and all other benefits of employment lost as a result of the actions complained of herein.

d. Grant Plaintiff any compensatory and/or punitive damages to which he is entitled to under the above Age Discrimination in Employment Act of 1967 and/or the Tennessee Human Rights Act as a result of the actions complained of herein, including but not limited to damages for his severe embarrassment, humiliation and emotional distress.

e. Grant Plaintiff a trial by jury.

f. Grant Plaintiff his costs incurred herein, including a reasonable attorney's fee pursuant to 42 U.S.C. § 1988.

g. Grant Plaintiff such other further relief both general and specific as the court deems necessary and proper in this case.

Respectfully submitted,

WEINMAN & ASSOCIATES

/S/ Michael L. Weinman

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